

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference CAPIMOVE	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/FR00/00581	International filing date (day/month/year) 09 March 2000 (09.03.00)	Priority date (day/month/year) 09 March 1999 (09.03.99)
International Patent Classification (IPC) or national classification and IPC B01L 3/00		
Applicant BIOMERIEUX S.A.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>7</u> sheets, including this cover sheet. <input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT). These annexes consist of a total of <u>5</u> sheets.
3. This report contains indications relating to the following items: I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input checked="" type="checkbox"/> Certain documents cited VII <input checked="" type="checkbox"/> Certain defects in the international application VIII <input checked="" type="checkbox"/> Certain observations on the international application

Date of submission of the demand 11 August 2000 (11.08.00)	Date of completion of this report 19 June 2001 (19.06.2001)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/FR00/00581

I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
pages 1,2,4,6,7, as originally filed
pages _____, filed with the demand
pages 3,5,8, filed with the letter of 16 February 2001 (16.02.2001)
- ☒ the claims:
pages _____, as originally filed
pages _____, as amended (together with any statement under Article 19
pages _____, filed with the demand
pages 1-8, filed with the letter of 16 February 2001 (16.02.2001)
- ☒ the drawings:
pages 1/3-3/3, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☒ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

I. Basis of the report

1. This report has been drawn on the basis of (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.*):

The amendment made to claim 1 with the letter of 16 February 2001 causes the subject matter of the application to be extended beyond the content of the application as filed. Therefore, it is contrary to the provisions of PCT Article 34(2)(b). The amendment in question is as follows:

"a space enabling [...] at least two liquid samples to move independently"; the feature "exposing them to one another to cause a reaction therebetween" has been omitted.

However, there is no basis for such a feature in the originally filed documents considered as a whole. The expression "at least two" appears only in conjunction with "exposing them to one another to cause a reaction therebetween". Therefore, the examination has been carried out on the basis of the set of claims originally filed. The amendments to pages 3, 5 and 8, however, do comply with the provisions of PCT Article 34(2)(b).

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/FR 00/00581

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-8	YES
	Claims		NO
Inventive step (IS)	Claims	1-8	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-8	YES
	Claims		NO

2. Citations and explanations

1. Novelty

Document D2 (EP-A-0 075 605) is considered to be the closest available prior art document because it discloses an apparatus comprising a planar surface (see figure 10; 10 001) on which compartments are located that define a space in which at least one liquid sample can move. The compartments consist of two different types of groove:

- a first type of deep groove acting as a sample partitioning means, and
- a second type of shallow groove acting as a sample receiving means.

The two types of groove enable the movement of the sample to be guided depending on the position of the apparatus.

The features that differentiate the subject matter of claim 1 from the prior art are the following:

- the one or more deep grooves are at such a distance from the partition that no capillary effect occurs, and
- the one or more shallow grooves are at such a distance from the partition that a capillary effect

does occur.

Therefore, the subject matter of claim 1 as well as the claims dependent thereon is novel over the available prior art (PCT Article 33(2)).

2. Inventive step

The technical problem addressed by the subject matter of claim 1 is that of providing an apparatus capable of moving liquids and requiring transfer means less sophisticated than those of the prior art (page 1, lines 26-28). The problem is solved by the distinctive features of claim 1. By causing a capillary effect between the partition and the second type of groove and providing a first type of groove acting as a sample partitioning means, the liquid is guided without the entire cross-sectional area of the conventional channels being occupied. The retaining forces that hinder the movement of the liquid are thus reduced.

Since the distinctive features are not found in the available prior art, it cannot be alleged that an alteration of the apparatus described in document D1 leading to the subject matter of claim 1 is suggested by said available prior art (PCT Article 33(3)).

3. Industrial applicability

Industrial applicability is clear from the description (PCT Article 33(1), (3)).

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/FR 00/00581

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: VI

Document D1:

DE 299 07 804 U, 11/11/1999, 19/04/1999, 30/04 &
23/06/1999

was published after the priority date of the present
application and discloses an apparatus having the same
features as those constituting the subject matter of
claims 1 to 5.

VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

1. Claim 1 has been drafted in two parts. However, contrary to PCT Rule 6.3(b), some of the features known from the prior art are included in the characterising part (see Box V, point 1 above). The two-part drafting does not appear to be appropriate.
2. The term "partitioning film" used in claims 7 and 8 has not been defined in any of the preceding claims. It is suggested that it be deleted.
3. Under the terms of PCT Rule 10.2, the terminology and reference signs of the application should be consistent. The use of the terms "surface tab" and "surface groove" to denote the same feature fails to comply with this requirement (see page 5).

VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

The application fails to comply with the requirements of PCT Article 6 since the claims are unclear.

1. In claim 1, the word "independently" is unclear since it appears to refer only to cases where a plurality of liquids are moved.
2. The subject matter of claim 1 also encompasses an option whereby an apparatus can move two liquids and cause them to react (see the passage beginning "when..."). However, claim 1 does not include the structural features essential for this function to be achieved. Said features are set forth only in claim 6. It should be noted that, in general, it is preferable for optional embodiments to be set forth in the dependent claims rather than in the independent claim.
3. The term "free end" used in claim 6 is unclear because, according to claim 1, the end is surrounded by the groove (16).